

AMENDED IN ASSEMBLY APRIL 9, 2014

AMENDED IN SENATE FEBRUARY 14, 2013

SENATE BILL

No. 20

Introduced by Senator Hernandez

December 3, 2012

An act to amend ~~Section 1341.45 of the Health and Safety Code, relating to health.~~ *Section 100503 of the Government Code, to amend Sections 1348.95 and 1399.849 of the Health and Safety Code, and to amend Sections 10127.19 and 10965.3 of the Insurance Code, relating to health care coverage.*

LEGISLATIVE COUNSEL'S DIGEST

SB 20, as amended, Hernandez. ~~Health care: workforce training.~~
Health care coverage.

Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), enacts various health care coverage market reforms that take effect January 1, 2014. Among other things, PPACA requires each health insurance issuer that offers health insurance coverage in the individual or group market in a state to accept every employer and individual in the state that applies for that coverage and to renew that coverage at the option of the plan sponsor or the individual. PPACA also requires each state to, by January 1, 2014, establish an American Health Benefit Exchange that facilitates the purchase of qualified health plans by qualified individuals and qualified small employers, as specified.

Existing law establishes the California Health Benefit Exchange within state government, specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified

individuals and small employers. Existing law requires the board to undertake activities necessary to market and publicize the availability of health care coverage and federal subsidies through the Exchange and to undertake outreach and enrollment activities that seek to assist with enrolling in the Exchange in the least burdensome manner. Existing law also requires the board of the Exchange to annually prepare a written report on the implementation and performance of the Exchange functions during the preceding fiscal year, as specified, and requires that this report be submitted to the Legislature and the Governor and be made available to the public on the Internet Web site of the Exchange.

This bill would require the annual report to also include an assessment of how the Exchange is performing compared to its operational and service principles for its Internet Web site and customer service center, a summary of the Exchange's outreach strategy for the enrollment of consumers with limited English language proficiency and insufficient access to the Internet, and the total number of covered lives under qualified health plans purchased through the Exchange, as well as specified additional data regarding those lives.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law requires a health care service plan or health insurer, on and after October 1, 2013, to offer, market, and sell all of the plan's insurer's health benefit plans that are sold in the individual market for policy years on or after January 1, 2014, to all individuals and dependents in each service area in which the plan or insurer provides or arranges for the provision of health care services, as specified, but requires plans and insurers to limit enrollment in individual health benefit plans to specified open enrollment and special enrollment periods. Existing law requires a plan or insurer to provide an initial open enrollment period from October 1, 2013, to March 31, 2014, inclusive, and annual enrollment periods for plan years on or after January 1, 2015, from October 15 to December 7, inclusive, of the preceding calendar year.

This bill would authorize the Exchange to modify the initial open enrollment period and the first annual enrollment period to the extent permitted by PPACA, and would require individual health benefit plans to comply with those modifications whether offered inside or outside the Exchange.

Existing law requires a health care service plan or health insurer to annually report, by March 31, the number of enrollees by product type as of December 31 of the prior year that receive coverage under a plan contract or health insurance policy that covers individuals, small groups, large groups, or administrative services only business lines. Existing law requires that plans and insurers include the enrollment data in specific products types as determined by the department.

This bill would instead specify those product types and would also require plans and insurers to report their enrollment in nongrandfathered coverage by coverage tier, if applicable, and by whether the coverage was purchased through the Exchange or outside the Exchange. The bill would also require a plan offering individual plan contracts or a health insurer offering individual health insurance policies to, by May 1, 2014, or within 30 days after the end of the initial open enrollment period described above, report to the department the plan's or insurer's enrollment as of March 31, 2014, or the end of the initial open enrollment period, whichever date is later, by product type, coverage tier, age and gender, and whether coverage was purchased inside or outside the Exchange, as specified. The bill would require the departments to report this data to the fiscal and appropriate policy committees of the Legislature by June 1, 2014, or within 60 days of the end of the initial open enrollment period, whichever date is later.

Because a willful violation of the bill's requirements by a health care service plan would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and imposes certain requirements on health care service plans. Existing law imposes, for certain violations of these provisions, various fines and administrative penalties, which are deposited in the Managed Care Administrative Fines and Penalties Fund. Existing law requires the first \$1,000,000 in the fund to be transferred each year to the Medically Underserved Account for Physicians in the Health Professions Education Fund for purposes of the Steven M. Thompson Physician Corps Loan~~

~~Repayment Program. Existing law requires all remaining funds to be transferred each year to the Major Risk Medical Insurance Fund for purposes of the Major Risk Medical Insurance Program.~~

~~This bill, beginning on the date that the Major Risk Medical Insurance Program becomes inoperative, would instead require all the funds in the Managed Care Administrative Fines and Penalties Fund to be transferred each year to the Medically Underserved Account for Physicians in the Health Professions Education Fund for purposes of the Steven M. Thompson Physician Corps Loan Repayment Program. The bill would require the Director of Finance to notify the Joint Legislative Budget Committee in that regard.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 100503 of the Government Code, as
2 amended by Section 4 of Chapter 5 of the First Extraordinary
3 Session of the Statutes of 2013, is amended to read:

4 100503. In addition to meeting the minimum requirements of
5 Section 1311 of the federal act, the board shall do all of the
6 following:

7 (a) Determine the criteria and process for eligibility, enrollment,
8 and disenrollment of enrollees and potential enrollees in the
9 Exchange and coordinate that process with the state and local
10 government entities administering other health care coverage
11 programs, including the State Department of Health Care Services,
12 the Managed Risk Medical Insurance Board, and California
13 counties, in order to ensure consistent eligibility and enrollment
14 processes and seamless transitions between coverage.

15 (b) Develop processes to coordinate with the county entities
16 that administer eligibility for the Medi-Cal program and the entity
17 that determines eligibility for the Healthy Families Program,
18 including, but not limited to, processes for case transfer, referral,
19 and enrollment in the Exchange of individuals applying for
20 assistance to those entities, if allowed or required by federal law.

21 (c) Determine the minimum requirements a carrier must meet
22 to be considered for participation in the Exchange, and the
23 standards and criteria for selecting qualified health plans to be
24 offered through the Exchange that are in the best interests of

1 qualified individuals and qualified small employers. The board
2 shall consistently and uniformly apply these requirements,
3 standards, and criteria to all carriers. In the course of selectively
4 contracting for health care coverage offered to qualified individuals
5 and qualified small employers through the Exchange, the board
6 shall seek to contract with carriers so as to provide health care
7 coverage choices that offer the optimal combination of choice,
8 value, quality, and service.

9 (d) Provide, in each region of the state, a choice of qualified
10 health plans at each of the five levels of coverage contained in
11 subsections (d) and (e) of Section 1302 of the federal act.

12 (e) Require, as a condition of participation in the Exchange,
13 carriers to fairly and affirmatively offer, market, and sell in the
14 Exchange at least one product within each of the five levels of
15 coverage contained in subsections (d) and (e) of Section 1302 of
16 the federal act. The board may require carriers to offer additional
17 products within each of those five levels of coverage. This
18 subdivision shall not apply to a carrier that solely offers
19 supplemental coverage in the Exchange under paragraph (10) of
20 subdivision (a) of Section 100504.

21 (f) (1) Except as otherwise provided in this section and Section
22 100504.5, require, as a condition of participation in the Exchange,
23 carriers that sell any products outside the Exchange to do both of
24 the following:

25 (A) Fairly and affirmatively offer, market, and sell all products
26 made available to individuals in the Exchange to individuals
27 purchasing coverage outside the Exchange.

28 (B) Fairly and affirmatively offer, market, and sell all products
29 made available to small employers in the Exchange to small
30 employers purchasing coverage outside the Exchange.

31 (2) For purposes of this subdivision, “product” does not include
32 contracts entered into pursuant to Part 6.2 (commencing with
33 Section 12693) of Division 2 of the Insurance Code between the
34 Managed Risk Medical Insurance Board and carriers for enrolled
35 Healthy Families beneficiaries or contracts entered into pursuant
36 to Chapter 7 (commencing with Section 14000) of, or Chapter 8
37 (commencing with Section 14200) of, Part 3 of Division 9 of the
38 Welfare and Institutions Code between the State Department of
39 Health Care Services and carriers for enrolled Medi-Cal

1 beneficiaries. “Product” also does not include a bridge plan product
2 offered pursuant to Section 100504.5.

3 (3) Except as required by Section 1301(a)(1)(C)(ii) of the federal
4 act, a carrier offering a bridge plan product in the Exchange may
5 limit the products it offers in the Exchange solely to a bridge plan
6 product contract.

7 (g) Determine when an enrollee’s coverage commences and the
8 extent and scope of coverage.

9 (h) Provide for the processing of applications and the enrollment
10 and disenrollment of enrollees.

11 (i) Determine and approve cost-sharing provisions for qualified
12 health plans.

13 (j) Establish uniform billing and payment policies for qualified
14 health plans offered in the Exchange to ensure consistent
15 enrollment and disenrollment activities for individuals enrolled in
16 the Exchange.

17 (k) Undertake activities necessary to market and publicize the
18 availability of health care coverage and federal subsidies through
19 the Exchange. The board shall also undertake outreach and
20 enrollment activities that seek to assist enrollees and potential
21 enrollees with enrolling and reenrolling in the Exchange in the
22 least burdensome manner, including populations that may
23 experience barriers to enrollment, such as the disabled and those
24 with limited English language proficiency.

25 (l) Select and set performance standards and compensation for
26 navigators selected under subdivision (l) of Section 100502.

27 (m) Employ necessary staff.

28 (1) The board shall hire a chief fiscal officer, a chief operations
29 officer, a director for the SHOP Exchange, a director of Health
30 Plan Contracting, a chief technology and information officer, a
31 general counsel, and other key executive positions, as determined
32 by the board, who shall be exempt from civil service.

33 (2) (A) The board shall set the salaries for the exempt positions
34 described in paragraph (1) and subdivision (i) of Section 100500
35 in amounts that are reasonably necessary to attract and retain
36 individuals of superior qualifications. The salaries shall be
37 published by the board in the board’s annual budget. The board’s
38 annual budget shall be posted on the Internet Web site of the
39 Exchange. To determine the compensation for these positions, the

1 board shall cause to be conducted, through the use of independent
2 outside advisors, salary surveys of both of the following:

3 (i) Other state and federal health insurance exchanges that are
4 most comparable to the Exchange.

5 (ii) Other relevant labor pools.

6 (B) The salaries established by the board under subparagraph
7 (A) shall not exceed the highest comparable salary for a position
8 of that type, as determined by the surveys conducted pursuant to
9 subparagraph (A).

10 (C) The Department of Human Resources shall review the
11 methodology used in the surveys conducted pursuant to
12 subparagraph (A).

13 (3) The positions described in paragraph (1) and subdivision (i)
14 of Section 100500 shall not be subject to otherwise applicable
15 provisions of the Government Code or the Public Contract Code
16 and, for those purposes, the Exchange shall not be considered a
17 state agency or public entity.

18 (n) Assess a charge on the qualified health plans offered by
19 carriers that is reasonable and necessary to support the
20 development, operations, and prudent cash management of the
21 Exchange. This charge shall not affect the requirement under
22 Section 1301 of the federal act that carriers charge the same
23 premium rate for each qualified health plan whether offered inside
24 or outside the Exchange.

25 (o) Authorize expenditures, as necessary, from the California
26 Health Trust Fund to pay program expenses to administer the
27 Exchange.

28 (p) Keep an accurate accounting of all activities, receipts, and
29 expenditures, and annually submit to the United States Secretary
30 of Health and Human Services a report concerning that accounting.
31 Commencing January 1, 2016, the board shall conduct an annual
32 audit.

33 (q) (1) ~~Annually~~ (A) *Notwithstanding Section 10231.5, annually*
34 prepare a written report on the implementation and performance
35 of the Exchange functions during the preceding fiscal year,
36 including, at a minimum, ~~the~~ *all of the following:*

37 (i) *The manner in which funds were expended and the progress*
38 *toward, and the achievement of, the requirements of this title.* ~~The~~
39 ~~report shall also include data~~

1 (ii) Data provided by health care service plans and health
2 insurers offering bridge plan products regarding the extent of health
3 care provider and health facility overlap in their Medi-Cal networks
4 as compared to the health care provider and health facility networks
5 contracting with the plan or insurer in their bridge plan contracts.

6 ~~This~~

7 (iii) An assessment of how the Exchange is performing compared
8 to its operational and service principles for its Internet Web site
9 and customer service center. If the Exchange determines that it is
10 not meeting those operational and service principles, the report
11 shall also include a plan describing how the Exchange intends to
12 meet those principles.

13 (iv) A summary of the Exchange's outreach strategy for the
14 enrollment of consumers with limited English language proficiency.

15 (v) A summary of the Exchange's outreach strategy for the
16 enrollment of consumers lacking sufficient access to the Internet.

17 (vi) The total number of lives covered under qualified health
18 plans purchased through the Exchange as of the end of the
19 immediately preceding fiscal year.

20 (vii) The percentage of lives reported under clause (vi) receiving
21 a premium tax credit under Section 36B of the federal Internal
22 Revenue Code of 1986.

23 (viii) The percentage of lives reported under clause (vi) enrolled
24 in each of the levels of coverage identified in Sections 1367.008
25 and 1367.009 of the Health and Safety Code and Sections
26 10112.295 and 10112.297 of the Insurance Code.

27 (ix) The age, race, and ethnicity of the lives reported under
28 clause (vi).

29 (B) The report required by this paragraph shall be transmitted
30 to the Legislature and the Governor and shall be made available
31 to the public on the Internet Web site of the Exchange. A report
32 made to the Legislature pursuant to this ~~subdivision~~ paragraph
33 shall be submitted pursuant to Section 9795.

34 (2) The Exchange shall prepare, or contract for the preparation
35 of, an evaluation of the bridge plan program using the first three
36 years of experience with the program. The evaluation shall be
37 provided to the health policy and fiscal committees of the
38 Legislature in the fourth year following federal approval of the
39 bridge plan option. The evaluation shall include, but not be limited
40 to, all of the following:

- 1 (A) The number of individuals eligible to participate in the
2 bridge plan program each year by category of eligibility.
- 3 (B) The number of eligible individuals who elect a bridge plan
4 option each year by category of eligibility.
- 5 (C) The average length of time, by region and statewide, that
6 individuals remain in the bridge plan option each year by category
7 of eligibility.
- 8 (D) The regions of the state with a bridge plan option, and the
9 carriers in each region that offer a bridge plan, by year.
- 10 (E) The premium difference each year, by region, between the
11 bridge plan and the first and second lowest cost plan for individuals
12 in the Exchange who are not eligible for the bridge plan.
- 13 (F) The effect of the bridge plan on the premium subsidy amount
14 for bridge plan eligible individuals each year by each region.
- 15 (G) Based on a survey of individuals enrolled in the bridge plan:
- 16 (i) Whether individuals enrolling in the bridge plan product are
17 able to keep their existing health care providers.
- 18 (ii) Whether individuals would want to retain their bridge plan
19 product, buy a different Exchange product, or decline to purchase
20 health insurance if there was no bridge plan product available. The
21 Exchange may include questions designed to elicit the information
22 in this subparagraph as part of an existing survey of individuals
23 receiving coverage in the Exchange.
- 24 (3) In addition to the evaluation required by paragraph (2), the
25 Exchange shall post the items in subparagraphs (A) to (F),
26 inclusive, on its Internet Web site each year.
- 27 (4) In addition to the report described in paragraph (1), the board
28 shall be responsive to requests for additional information from the
29 Legislature, including providing testimony and commenting on
30 proposed state legislation or policy issues. The Legislature finds
31 and declares that activities including, but not limited to, responding
32 to legislative or executive inquiries, tracking and commenting on
33 legislation and regulatory activities, and preparing reports on the
34 implementation of this title and the performance of the Exchange,
35 are necessary state requirements and are distinct from the
36 promotion of legislative or regulatory modifications referred to in
37 subdivision (d) of Section 100520.
- 38 (r) Maintain enrollment and expenditures to ensure that
39 expenditures do not exceed the amount of revenue in the fund, and

1 if sufficient revenue is not available to pay estimated expenditures,
2 institute appropriate measures to ensure fiscal solvency.

3 (s) Exercise all powers reasonably necessary to carry out and
4 comply with the duties, responsibilities, and requirements of this
5 act and the federal act.

6 (t) Consult with stakeholders relevant to carrying out the
7 activities under this title, including, but not limited to, all of the
8 following:

9 (1) Health care consumers who are enrolled in health plans.

10 (2) Individuals and entities with experience in facilitating
11 enrollment in health plans.

12 (3) Representatives of small businesses and self-employed
13 individuals.

14 (4) The State Medi-Cal Director.

15 (5) Advocates for enrolling hard-to-reach populations.

16 (u) Facilitate the purchase of qualified health plans in the
17 Exchange by qualified individuals and qualified small employers
18 no later than January 1, 2014.

19 (v) Report, or contract with an independent entity to report, to
20 the Legislature by December 1, 2018, on whether to adopt the
21 option in Section 1312(c)(3) of the federal act to merge the
22 individual and small employer markets. In its report, the board
23 shall provide information, based on at least two years of data from
24 the Exchange, on the potential impact on rates paid by individuals
25 and by small employers in a merged individual and small employer
26 market, as compared to the rates paid by individuals and small
27 employers if a separate individual and small employer market is
28 maintained. A report made pursuant to this subdivision shall be
29 submitted pursuant to Section 9795.

30 (w) With respect to the SHOP Program, collect premiums and
31 administer all other necessary and related tasks, including, but not
32 limited to, enrollment and plan payment, in order to make the
33 offering of employee plan choice as simple as possible for qualified
34 small employers.

35 (x) Require carriers participating in the Exchange to immediately
36 notify the Exchange, under the terms and conditions established
37 by the board when an individual is or will be enrolled in or
38 disenrolled from any qualified health plan offered by the carrier.

39 (y) Ensure that the Exchange provides oral interpretation
40 services in any language for individuals seeking coverage through

1 the Exchange and makes available a toll-free telephone number
2 for the hearing and speech impaired. The board shall ensure that
3 written information made available by the Exchange is presented
4 in a plainly worded, easily understandable format and made
5 available in prevalent languages.

6 (z) This section shall become inoperative on the October 1 that
7 is five years after the date that federal approval of the bridge plan
8 option occurs, and, as of the second January 1 thereafter, is
9 repealed, unless a later enacted statute that is enacted before that
10 date deletes or extends the dates on which it becomes inoperative
11 and is repealed.

12 *SEC. 2. Section 100503 of the Government Code, as added by*
13 *Section 5 of Chapter 5 of the First Extraordinary Session of the*
14 *Statutes of 2013, is amended to read:*

15 100503. In addition to meeting the minimum requirements of
16 Section 1311 of the federal act, the board shall do all of the
17 following:

18 (a) Determine the criteria and process for eligibility, enrollment,
19 and disenrollment of enrollees and potential enrollees in the
20 Exchange and coordinate that process with the state and local
21 government entities administering other health care coverage
22 programs, including the State Department of Health Care Services,
23 the Managed Risk Medical Insurance Board, and California
24 counties, in order to ensure consistent eligibility and enrollment
25 processes and seamless transitions between coverage.

26 (b) Develop processes to coordinate with the county entities
27 that administer eligibility for the Medi-Cal program and the entity
28 that determines eligibility for the Healthy Families Program,
29 including, but not limited to, processes for case transfer, referral,
30 and enrollment in the Exchange of individuals applying for
31 assistance to those entities, if allowed or required by federal law.

32 (c) Determine the minimum requirements a carrier must meet
33 to be considered for participation in the Exchange, and the
34 standards and criteria for selecting qualified health plans to be
35 offered through the Exchange that are in the best interests of
36 qualified individuals and qualified small employers. The board
37 shall consistently and uniformly apply these requirements,
38 standards, and criteria to all carriers. In the course of selectively
39 contracting for health care coverage offered to qualified individuals
40 and qualified small employers through the Exchange, the board

1 shall seek to contract with carriers so as to provide health care
2 coverage choices that offer the optimal combination of choice,
3 value, quality, and service.

4 (d) Provide, in each region of the state, a choice of qualified
5 health plans at each of the five levels of coverage contained in
6 subsections (d) and (e) of Section 1302 of the federal act.

7 (e) Require, as a condition of participation in the Exchange,
8 carriers to fairly and affirmatively offer, market, and sell in the
9 Exchange at least one product within each of the five levels of
10 coverage contained in subsections (d) and (e) of Section 1302 of
11 the federal act. The board may require carriers to offer additional
12 products within each of those five levels of coverage. This
13 subdivision shall not apply to a carrier that solely offers
14 supplemental coverage in the Exchange under paragraph (10) of
15 subdivision (a) of Section 100504.

16 (f) (1) Require, as a condition of participation in the Exchange,
17 carriers that sell any products outside the Exchange to do both of
18 the following:

19 (A) Fairly and affirmatively offer, market, and sell all products
20 made available to individuals in the Exchange to individuals
21 purchasing coverage outside the Exchange.

22 (B) Fairly and affirmatively offer, market, and sell all products
23 made available to small employers in the Exchange to small
24 employers purchasing coverage outside the Exchange.

25 (2) For purposes of this subdivision, “product” does not include
26 contracts entered into pursuant to Part 6.2 (commencing with
27 Section 12693) of Division 2 of the Insurance Code between the
28 Managed Risk Medical Insurance Board and carriers for enrolled
29 Healthy Families beneficiaries or contracts entered into pursuant
30 to Chapter 7 (commencing with Section 14000) of, or Chapter 8
31 (commencing with Section 14200) of, Part 3 of Division 9 of the
32 Welfare and Institutions Code between the State Department of
33 Health Care Services and carriers for enrolled Medi-Cal
34 beneficiaries.

35 (g) Determine when an enrollee’s coverage commences and the
36 extent and scope of coverage.

37 (h) Provide for the processing of applications and the enrollment
38 and disenrollment of enrollees.

39 (i) Determine and approve cost-sharing provisions for qualified
40 health plans.

1 (j) Establish uniform billing and payment policies for qualified
2 health plans offered in the Exchange to ensure consistent
3 enrollment and disenrollment activities for individuals enrolled in
4 the Exchange.

5 (k) Undertake activities necessary to market and publicize the
6 availability of health care coverage and federal subsidies through
7 the Exchange. The board shall also undertake outreach and
8 enrollment activities that seek to assist enrollees and potential
9 enrollees with enrolling and reenrolling in the Exchange in the
10 least burdensome manner, including populations that may
11 experience barriers to enrollment, such as the disabled and those
12 with limited English language proficiency.

13 (l) Select and set performance standards and compensation for
14 navigators selected under subdivision (l) of Section 100502.

15 (m) Employ necessary staff.

16 (1) The board shall hire a chief fiscal officer, a chief operations
17 officer, a director for the SHOP Exchange, a director of Health
18 Plan Contracting, a chief technology and information officer, a
19 general counsel, and other key executive positions, as determined
20 by the board, who shall be exempt from civil service.

21 (2) (A) The board shall set the salaries for the exempt positions
22 described in paragraph (1) and subdivision (i) of Section 100500
23 in amounts that are reasonably necessary to attract and retain
24 individuals of superior qualifications. The salaries shall be
25 published by the board in the board's annual budget. The board's
26 annual budget shall be posted on the Internet Web site of the
27 Exchange. To determine the compensation for these positions, the
28 board shall cause to be conducted, through the use of independent
29 outside advisors, salary surveys of both of the following:

30 (i) Other state and federal health insurance exchanges that are
31 most comparable to the Exchange.

32 (ii) Other relevant labor pools.

33 (B) The salaries established by the board under subparagraph
34 (A) shall not exceed the highest comparable salary for a position
35 of that type, as determined by the surveys conducted pursuant to
36 subparagraph (A).

37 (C) The Department of Human Resources shall review the
38 methodology used in the surveys conducted pursuant to
39 subparagraph (A).

1 (3) The positions described in paragraph (1) and subdivision (i)
2 of Section 100500 shall not be subject to otherwise applicable
3 provisions of the Government Code or the Public Contract Code
4 and, for those purposes, the Exchange shall not be considered a
5 state agency or public entity.

6 (n) Assess a charge on the qualified health plans offered by
7 carriers that is reasonable and necessary to support the
8 development, operations, and prudent cash management of the
9 Exchange. This charge shall not affect the requirement under
10 Section 1301 of the federal act that carriers charge the same
11 premium rate for each qualified health plan whether offered inside
12 or outside the Exchange.

13 (o) Authorize expenditures, as necessary, from the California
14 Health Trust Fund to pay program expenses to administer the
15 Exchange.

16 (p) Keep an accurate accounting of all activities, receipts, and
17 expenditures, and annually submit to the United States Secretary
18 of Health and Human Services a report concerning that accounting.
19 Commencing January 1, 2016, the board shall conduct an annual
20 audit.

21 (q) (1) ~~Annually~~ *(A) Notwithstanding Section 10231.5, annually*
22 *prepare a written report on the implementation and performance*
23 *of the Exchange functions during the preceding fiscal year,*
24 *including, at a minimum, the all of the following:*

25 *(i) The manner in which funds were expended and the progress*
26 *toward, and the achievement of, the requirements of this title. This*

27 *(ii) An assessment of how the Exchange is performing compared*
28 *to its operational and service principles for its Internet Web site*
29 *and customer service center. If the Exchange determines that it is*
30 *not meeting those operational and service principles, the report*
31 *shall also include a plan describing how the Exchange intends to*
32 *meet those principles.*

33 *(iii) A summary of the Exchange's outreach strategy for the*
34 *enrollment of consumers with limited English language proficiency.*

35 *(iv) A summary of the Exchange's outreach strategy for the*
36 *enrollment of consumers lacking sufficient access to the Internet.*

37 *(v) The total number of lives covered under qualified health*
38 *plans purchased through the Exchange as of the end of the*
39 *immediately preceding fiscal year.*

1 (vi) *The percentage of lives reported under clause (v) receiving*
2 *a premium tax credit under Section 36B of the federal Internal*
3 *Revenue Code of 1986.*

4 (vii) *The percentage of lives reported under clause (v) enrolled*
5 *in each of the levels of coverage identified in Sections 1367.008*
6 *and 1367.009 of the Health and Safety Code and Sections*
7 *10112.295 and 10112.297 of the Insurance Code.*

8 (viii) *The age, race, and ethnicity of the lives reported under*
9 *clause (v).*

10 (B) *The report required by this paragraph shall be transmitted*
11 *to the Legislature and the Governor and shall be made available*
12 *to the public on the Internet Web site of the Exchange. A report*
13 *made to the Legislature pursuant to this ~~subdivision~~ paragraph*
14 *shall be submitted pursuant to Section 9795.*

15 (2) In addition to the report described in paragraph (1), the board
16 shall be responsive to requests for additional information from the
17 Legislature, including providing testimony and commenting on
18 proposed state legislation or policy issues. The Legislature finds
19 and declares that activities including, but not limited to, responding
20 to legislative or executive inquiries, tracking and commenting on
21 legislation and regulatory activities, and preparing reports on the
22 implementation of this title and the performance of the Exchange,
23 are necessary state requirements and are distinct from the
24 promotion of legislative or regulatory modifications referred to in
25 subdivision (d) of Section 100520.

26 (r) Maintain enrollment and expenditures to ensure that
27 expenditures do not exceed the amount of revenue in the fund, and
28 if sufficient revenue is not available to pay estimated expenditures,
29 institute appropriate measures to ensure fiscal solvency.

30 (s) Exercise all powers reasonably necessary to carry out and
31 comply with the duties, responsibilities, and requirements of this
32 act and the federal act.

33 (t) Consult with stakeholders relevant to carrying out the
34 activities under this title, including, but not limited to, all of the
35 following:

36 (1) Health care consumers who are enrolled in health plans.

37 (2) Individuals and entities with experience in facilitating
38 enrollment in health plans.

39 (3) Representatives of small businesses and self-employed
40 individuals.

1 (4) The State Medi-Cal Director.

2 (5) Advocates for enrolling hard-to-reach populations.

3 (u) Facilitate the purchase of qualified health plans in the
4 Exchange by qualified individuals and qualified small employers
5 no later than January 1, 2014.

6 (v) Report, or contract with an independent entity to report, to
7 the Legislature by December 1, 2018, on whether to adopt the
8 option in Section 1312(c)(3) of the federal act to merge the
9 individual and small employer markets. In its report, the board
10 shall provide information, based on at least two years of data from
11 the Exchange, on the potential impact on rates paid by individuals
12 and by small employers in a merged individual and small employer
13 market, as compared to the rates paid by individuals and small
14 employers if a separate individual and small employer market is
15 maintained. A report made pursuant to this subdivision shall be
16 submitted pursuant to Section 9795.

17 (w) With respect to the SHOP Program, collect premiums and
18 administer all other necessary and related tasks, including, but not
19 limited to, enrollment and plan payment, in order to make the
20 offering of employee plan choice as simple as possible for qualified
21 small employers.

22 (x) Require carriers participating in the Exchange to immediately
23 notify the Exchange, under the terms and conditions established
24 by the board when an individual is or will be enrolled in or
25 disenrolled from any qualified health plan offered by the carrier.

26 (y) Ensure that the Exchange provides oral interpretation
27 services in any language for individuals seeking coverage through
28 the Exchange and makes available a toll-free telephone number
29 for the hearing and speech impaired. The board shall ensure that
30 written information made available by the Exchange is presented
31 in a plainly worded, easily understandable format and made
32 available in prevalent languages.

33 (z) This section shall become operative only if Section 4 of the
34 act that added this section becomes inoperative pursuant to
35 subdivision (z) of that Section 4.

36 *SEC. 3. Section 1348.95 of the Health and Safety Code is*
37 *amended to read:*

38 1348.95. (a) (1) Commencing March 1, 2013, and at least
39 annually thereafter, every health care service plan, ~~not including~~
40 ~~a health care service plan offering specialized health care service~~

1 ~~plan contracts, shall provide report to the department, in a form~~
2 ~~and manner determined by the department in consultation with the~~
3 ~~Department of Insurance, the number of enrollees, by product type,~~
4 ~~as of December 31 of the prior year, that receive health care~~
5 ~~coverage under a health care service plan contract that covers~~
6 ~~plan's enrollment under its plan contracts, excluding specialized~~
7 ~~health care service plan contracts, that cover individuals, small~~
8 ~~groups, large groups, or administrative services only business lines~~
9 ~~as of December 31 of the immediately preceding year. Health care~~
10 ~~service plans shall include the enrollment data in specific product~~
11 ~~types as determined by the department, including, but not limited~~
12 ~~to, HMO, point-of-service, PPO, grandfathered, and Medi-Cal~~
13 ~~managed care. The This report shall, at a minimum, include the~~
14 ~~following information:~~

15 (A) *The plan's enrollment in nongrandfathered coverage by*
16 *product type (HMO, point-of-service, PPO, EPO, Medi-Cal*
17 *managed care, or other), coverage tier (catastrophic, bronze-HSA,*
18 *bronze, silver-HSA, silver, gold, or platinum), if applicable, and*
19 *whether the coverage was purchased through the Exchange or*
20 *outside the Exchange.*

21 (B) *The plan's enrollment in grandfathered coverage by product*
22 *type (HMO, point-of-service, PPO, EPO, Medi-Cal managed care,*
23 *or other).*

24 (2) *The department shall publicly report the data provided by*
25 *each health care service plan pursuant to this section subdivision,*
26 *including, but not limited to, posting the data on the department's*
27 *Internet Web site. The*

28 (b) (1) *In addition to the report required under subdivision (a),*
29 *by May 1, 2014, or within 30 days after the end of the initial open*
30 *enrollment period described in subdivision (c) of Section 1399.849,*
31 *whichever date is later, a health care service plan offering*
32 *individual health care service plan contracts shall report to the*
33 *department, in a form and manner determined by the department*
34 *in consultation with the Department of Insurance, the plan's*
35 *enrollment under its individual health care service plan contracts,*
36 *excluding specialized health care service plan contracts, as of*
37 *March 31, 2014, or the date on which the initial open enrollment*
38 *period described in subdivision (c) of Section 1399.849 ends,*
39 *whichever date is later. The report shall, at a minimum, include*
40 *the following information:*

1 (A) *The plan’s enrollment in nongrandfathered coverage by*
2 *product type (HMO, point-of-service, PPO, EPO, Medi-Cal*
3 *managed care, or other), coverage tier (catastrophic, bronze-HSA,*
4 *bronze, silver-HSA, silver, gold, or platinum), age and gender,*
5 *and whether the coverage was purchased through the Exchange*
6 *or outside the Exchange.*

7 (B) *The plan’s enrollment in grandfathered coverage by product*
8 *type (HMO, point-of-service, PPO, EPO, Medi-Cal managed care,*
9 *or other) and by age and gender.*

10 (2) (A) *By June 1, 2014, or within 60 days after the end of the*
11 *initial open enrollment period described in subdivision (c) of*
12 *Section 1399.849, whichever date is later, the department shall*
13 *report to the fiscal and appropriate policy committees of the*
14 *Legislature, and post publicly on the department’s Internet Web*
15 *site, the enrollment data submitted by each health care service*
16 *plan pursuant to this subdivision.*

17 (B) *The requirement for submitting a report to the fiscal and*
18 *appropriate policy committees of the Legislature under this*
19 *paragraph is inoperative four years after the date on which the*
20 *report required under this paragraph is due, pursuant to Section*
21 *10231.5 of the Government Code.*

22 (c) *The department shall consult with the Department of*
23 *Insurance to ensure that the data collected and reported pursuant*
24 *to this section is comparable and consistent, ~~does not duplicate~~*
25 *existing reporting requirements, and utilizes existing reporting*
26 *formats to the extent feasible.*

27 (d) *For purposes of this section, the following definitions shall*
28 *apply:*

29 (1) *“Exchange” means the California Health Benefit Exchange*
30 *established under Section 100500 of the Government Code.*

31 (2) *“Grandfathered coverage” means coverage that constitutes*
32 *a grandfathered health plan under Section 1251 of the federal*
33 *Patient Protection and Affordable Care Act (Public Law 111-148),*
34 *as amended by the federal Health Care and Education*
35 *Reconciliation Act of 2010 (Public Law 111-152), and any rules,*
36 *regulations, or guidance issued pursuant to that law.*

37 (3) *“Nongrandfathered coverage” means coverage that does*
38 *not constitute grandfathered coverage.*

39 SEC. 4. *Section 1399.849 of the Health and Safety Code is*
40 *amended to read:*

1 1399.849. (a) (1) On and after October 1, 2013, a plan shall
2 fairly and affirmatively offer, market, and sell all of the plan's
3 health benefit plans that are sold in the individual market for policy
4 years on or after January 1, 2014, to all individuals and dependents
5 in each service area in which the plan provides or arranges for the
6 provision of health care services. A plan shall limit enrollment in
7 individual health benefit plans to open enrollment periods, *annual*
8 *enrollment periods*, and special enrollment periods as provided in
9 subdivisions (c) and (d).

10 (2) A plan shall allow the subscriber of an individual health
11 benefit plan to add a dependent to the subscriber's plan at the
12 option of the subscriber, consistent with the open enrollment,
13 annual enrollment, and special enrollment period requirements in
14 this section.

15 (b) An individual health benefit plan issued, amended, or
16 renewed on or after January 1, 2014, shall not impose any
17 preexisting condition provision upon any individual.

18 (c) (1) A plan shall provide an initial open enrollment period
19 from October 1, 2013, to March 31, 2014, inclusive, and annual
20 enrollment periods for ~~plan~~ *policy* years *beginning* on or after
21 January 1, 2015, from October 15 to December 7, inclusive, of the
22 preceding calendar year, *subject to paragraph (3)*.

23 (2) Pursuant to Section 147.104(b)(2) of Title 45 of the Code
24 of Federal Regulations, for individuals enrolled in noncalendar
25 year individual health plan contracts, a plan shall *also* provide a
26 limited open enrollment period beginning on the date that is 30
27 calendar days prior to the date the policy year ends in 2014.

28 (3) *To the extent permitted by PPACA, the Exchange may, by*
29 *regulation, modify the initial open enrollment period and the*
30 *annual enrollment period for the policy year beginning on January*
31 *1, 2015. A health benefit plan offered in the individual market shall*
32 *comply with those modifications regardless of whether the plan is*
33 *offered inside or outside the Exchange. A regulation adopted*
34 *pursuant to this paragraph shall be considered by the Office of*
35 *Administrative Law to be necessary for the immediate preservation*
36 *of the public peace, health and safety, and general welfare, and*
37 *may be adopted as an emergency regulation in accordance with*
38 *Chapter 3.5 (commencing with Section 11340) of Part 1 of Division*
39 *3 of Title 2 of the Government Code.*

1 (d) (1) Subject to paragraph (2), commencing January 1, 2014,
2 a plan shall allow an individual to enroll in or change individual
3 health benefit plans as a result of the following triggering events:

4 (A) He or she or his or her dependent loses minimum essential
5 coverage. For purposes of this paragraph, the following definitions
6 shall apply:

7 (i) “Minimum essential coverage” has the same meaning as that
8 term is defined in subsection (f) of Section 5000A of the Internal
9 Revenue Code (26 U.S.C. Sec. 5000A).

10 (ii) “Loss of minimum essential coverage” includes, but is not
11 limited to, loss of that coverage due to the circumstances described
12 in Section 54.9801-6(a)(3)(i) to (iii), inclusive, of Title 26 of the
13 Code of Federal Regulations and the circumstances described in
14 Section 1163 of Title 29 of the United States Code. “Loss of
15 minimum essential coverage” also includes loss of that coverage
16 for a reason that is not due to the fault of the individual.

17 (iii) “Loss of minimum essential coverage” does not include
18 loss of that coverage due to the individual’s failure to pay
19 premiums on a timely basis or situations allowing for a rescission,
20 subject to clause (ii) and Sections 1389.7 and 1389.21.

21 (B) He or she gains a dependent or becomes a dependent.

22 (C) He or she is mandated to be covered as a dependent pursuant
23 to a valid state or federal court order.

24 (D) He or she has been released from incarceration.

25 (E) His or her health coverage issuer substantially violated a
26 material provision of the health coverage contract.

27 (F) He or she gains access to new health benefit plans as a result
28 of a permanent move.

29 (G) He or she was receiving services from a contracting provider
30 under another health benefit plan, as defined in Section 1399.845
31 or Section 10965 of the Insurance Code, for one of the conditions
32 described in subdivision (c) of Section 1373.96 and that provider
33 is no longer participating in the health benefit plan.

34 (H) He or she demonstrates to the Exchange, with respect to
35 health benefit plans offered through the Exchange, or to the
36 department, with respect to health benefit plans offered outside
37 the Exchange, that he or she did not enroll in a health benefit plan
38 during the immediately preceding enrollment period available to
39 the individual because he or she was misinformed that he or she
40 was covered under minimum essential coverage.

1 (I) He or she is a member of the reserve forces of the United
2 States military returning from active duty or a member of the
3 California National Guard returning from active duty service under
4 Title 32 of the United States Code.

5 (J) With respect to individual health benefit plans offered
6 through the Exchange, in addition to the triggering events listed
7 in this paragraph, any other events listed in Section 155.420(d) of
8 Title 45 of the Code of Federal Regulations.

9 (2) With respect to individual health benefit plans offered
10 outside the Exchange, an individual shall have 60 days from the
11 date of a triggering event identified in paragraph (1) to apply for
12 coverage from a health care service plan subject to this section.
13 With respect to individual health benefit plans offered through the
14 Exchange, an individual shall have 60 days from the date of a
15 triggering event identified in paragraph (1) to select a plan offered
16 through the Exchange, unless a longer period is provided in Part
17 155 (commencing with Section 155.10) of Subchapter B of Subtitle
18 A of Title 45 of the Code of Federal Regulations.

19 (e) With respect to individual health benefit plans offered
20 through the Exchange, the effective date of coverage required
21 pursuant to this section shall be consistent with the dates specified
22 in Section 155.410 or 155.420 of Title 45 of the Code of Federal
23 Regulations, as applicable. A dependent who is a registered
24 domestic partner pursuant to Section 297 of the Family Code shall
25 have the same effective date of coverage as a spouse.

26 (f) With respect to individual health benefit plans offered outside
27 the Exchange, the following provisions shall apply:

28 (1) After an individual submits a completed application form
29 for a plan contract, the health care service plan shall, within 30
30 days, notify the individual of the individual's actual premium
31 charges for that plan established in accordance with Section
32 1399.855. The individual shall have 30 days in which to exercise
33 the right to buy coverage at the quoted premium charges.

34 (2) With respect to an individual health benefit plan for which
35 an individual applies during the initial open enrollment period
36 described in subdivision (c), when the subscriber submits a
37 premium payment, based on the quoted premium charges, and that
38 payment is delivered or postmarked, whichever occurs earlier, by
39 December 15, 2013, coverage under the individual health benefit
40 plan shall become effective no later than January 1, 2014. When

1 that payment is delivered or postmarked within the first 15 days
2 of any subsequent month, coverage shall become effective no later
3 than the first day of the following month. When that payment is
4 delivered or postmarked between December 16, 2013, and
5 December 31, 2013, inclusive, or after the 15th day of any
6 subsequent month, coverage shall become effective no later than
7 the first day of the second month following delivery or postmark
8 of the payment.

9 (3) With respect to an individual health benefit plan for which
10 an individual applies during the annual open enrollment period
11 described in subdivision (c), when the individual submits a
12 premium payment, based on the quoted premium charges, and that
13 payment is delivered or postmarked, whichever occurs later, by
14 December 15, coverage shall become effective as of the following
15 January 1. When that payment is delivered or postmarked within
16 the first 15 days of any subsequent month, coverage shall become
17 effective no later than the first day of the following month. When
18 that payment is delivered or postmarked between December 16
19 and December 31, inclusive, or after the 15th day of any subsequent
20 month, coverage shall become effective no later than the first day
21 of the second month following delivery or postmark of the
22 payment.

23 (4) With respect to an individual health benefit plan for which
24 an individual applies during a special enrollment period described
25 in subdivision (d), the following provisions shall apply:

26 (A) When the individual submits a premium payment, based
27 on the quoted premium charges, and that payment is delivered or
28 postmarked, whichever occurs earlier, within the first 15 days of
29 the month, coverage under the plan shall become effective no later
30 than the first day of the following month. When the premium
31 payment is neither delivered nor postmarked until after the 15th
32 day of the month, coverage shall become effective no later than
33 the first day of the second month following delivery or postmark
34 of the payment.

35 (B) Notwithstanding subparagraph (A), in the case of a birth,
36 adoption, or placement for adoption, the coverage shall be effective
37 on the date of birth, adoption, or placement for adoption.

38 (C) Notwithstanding subparagraph (A), in the case of marriage
39 or becoming a registered domestic partner or in the case where a
40 qualified individual loses minimum essential coverage, the

1 coverage effective date shall be the first day of the month following
2 the date the plan receives the request for special enrollment.

3 (g) (1) A health care service plan shall not establish rules for
4 eligibility, including continued eligibility, of any individual to
5 enroll under the terms of an individual health benefit plan based
6 on any of the following factors:

7 (A) Health status.

8 (B) Medical condition, including physical and mental illnesses.

9 (C) Claims experience.

10 (D) Receipt of health care.

11 (E) Medical history.

12 (F) Genetic information.

13 (G) Evidence of insurability, including conditions arising out
14 of acts of domestic violence.

15 (H) Disability.

16 (I) Any other health status-related factor as determined by any
17 federal regulations, rules, or guidance issued pursuant to Section
18 2705 of the federal Public Health Service Act.

19 (2) Notwithstanding Section 1389.1, a health care service plan
20 shall not require an individual applicant or his or her dependent
21 to fill out a health assessment or medical questionnaire prior to
22 enrollment under an individual health benefit plan. A health care
23 service plan shall not acquire or request information that relates
24 to a health status-related factor from the applicant or his or her
25 dependent or any other source prior to enrollment of the individual.

26 (h) (1) A health care service plan shall consider as a single risk
27 pool for rating purposes in the individual market the claims
28 experience of all insureds and enrollees in all nongrandfathered
29 individual health benefit plans offered by that health care service
30 plan in this state, whether offered as health care service plan
31 contracts or individual health insurance policies, including those
32 insureds and enrollees who enroll in individual coverage through
33 the Exchange and insureds and enrollees who enroll in individual
34 coverage outside of the Exchange. Student health insurance
35 coverage, as that coverage is defined in Section 147.145(a) of Title
36 45 of the Code of Federal Regulations, shall not be included in a
37 health care service plan's single risk pool for individual coverage.

38 (2) Each calendar year, a health care service plan shall establish
39 an index rate for the individual market in the state based on the
40 total combined claims costs for providing essential health benefits,

1 as defined pursuant to Section 1302 of PPACA, within the single
2 risk pool required under paragraph (1). The index rate shall be
3 adjusted on a marketwide basis based on the total expected
4 marketwide payments and charges under the risk adjustment and
5 reinsurance programs established for the state pursuant to Sections
6 1343 and 1341 of PPACA. The premium rate for all of the health
7 care service plan's health benefit plans in the individual market
8 shall use the applicable index rate, as adjusted for total expected
9 marketwide payments and charges under the risk adjustment and
10 reinsurance programs established for the state pursuant to Sections
11 1343 and 1341 of PPACA, subject only to the adjustments
12 permitted under paragraph (3).

13 (3) A health care service plan may vary premium rates for a
14 particular health benefit plan from its index rate based only on the
15 following actuarially justified plan-specific factors:

16 (A) The actuarial value and cost-sharing design of the health
17 benefit plan.

18 (B) The health benefit plan's provider network, delivery system
19 characteristics, and utilization management practices.

20 (C) The benefits provided under the health benefit plan that are
21 in addition to the essential health benefits, as defined pursuant to
22 Section 1302 of PPACA and Section 1367.005. These additional
23 benefits shall be pooled with similar benefits within the single risk
24 pool required under paragraph (1) and the claims experience from
25 those benefits shall be utilized to determine rate variations for
26 plans that offer those benefits in addition to essential health
27 benefits.

28 (D) With respect to catastrophic plans, as described in subsection
29 (e) of Section 1302 of PPACA, the expected impact of the specific
30 eligibility categories for those plans.

31 (E) Administrative costs, excluding user fees required by the
32 Exchange.

33 (i) This section shall only apply with respect to individual health
34 benefit plans for policy years on or after January 1, 2014.

35 (j) This section shall not apply to an individual health benefit
36 plan that is a grandfathered health plan.

37 (k) If Section 5000A of the Internal Revenue Code, as added
38 by Section 1501 of PPACA, is repealed or amended to no longer
39 apply to the individual market, as defined in Section 2791 of the
40 federal Public Health Service Act (42 U.S.C. Sec. ~~300gg-4~~),

1 300gg-91), subdivisions (a), (b), and (g) shall become inoperative
2 12 months after that repeal or amendment.

3 *SEC. 5. Section 10127.19 of the Insurance Code is amended*
4 *to read:*

5 10127.19. (a) (1) Commencing March 1, 2013, and at least
6 annually thereafter, every health insurer, ~~not including a health~~
7 ~~insurer offering specialized health insurance policies,~~ shall provide
8 report to the department, in a form and manner determined by the
9 department in consultation with the Department of Managed Health
10 Care, the number of covered lives, by product type, as of December
11 31 of the prior year, that receive health care coverage under a
12 health insurance policy that covers insurer's enrollment under its
13 health insurance policies, other than specialized health insurance
14 policies, that cover individuals, small groups, large groups, or
15 administrative services only business lines as of December 31 of
16 the immediately preceding year. ~~Health insurers shall include the~~
17 ~~unduplicated enrollment data in specific product types as~~
18 ~~determined by the department, including, but not limited to, HMO,~~
19 ~~point-of-service, PPO, grandfathered, and Medi-Cal managed care.~~
20 *The This report shall, at a minimum, include the following*
21 *information:*

22 (A) *The insurer's enrollment in nongrandfathered coverage by*
23 *product type (HMO, point-of-service, PPO, EPO, Medi-Cal*
24 *managed care, or other), coverage tier (catastrophic, bronze-HSA,*
25 *bronze, silver-HSA, silver, gold, or platinum), if applicable, and*
26 *whether the coverage was purchased through the Exchange or*
27 *outside the Exchange.*

28 (B) *The insurer's enrollment in grandfathered coverage by*
29 *product type (HMO, point-of-service, PPO, EPO, Medi-Cal*
30 *managed care, or other).*

31 (2) *The department shall publicly report the data provided by*
32 *each health insurer pursuant to this section subdivision, including,*
33 *but not limited to, posting the data on the department's Internet*
34 *Web site.* ~~The~~

35 (b) (1) *In addition to the report required under subdivision (a),*
36 *by May 1, 2014, or within 30 days after the end of the initial open*
37 *enrollment period described in subdivision (c) of Section 10965.3,*
38 *whichever date is later, a health insurer offering individual health*
39 *insurance policies shall report to the department, in a form and*
40 *manner determined by the department in consultation with the*

1 Department of Managed Health Care, the insurer's enrollment
2 under its individual health insurance policies, excluding specialized
3 health insurance policies, as of March 31, 2014, or the date on
4 which the initial open enrollment period described in subdivision
5 (c) of Section 10965.3 ends, whichever date is later. The report
6 shall, at a minimum, include the following information:

7 (A) The insurer's enrollment in nongrandfathered coverage by
8 product type (HMO, point-of-service, PPO, EPO, Medi-Cal
9 managed care, or other), coverage tier (catastrophic, bronze-HSA,
10 bronze, silver-HSA, silver, gold, or platinum), age and gender,
11 and whether the coverage was purchased through the Exchange
12 or outside the Exchange.

13 (B) The insurer's enrollment in grandfathered coverage by
14 product type (HMO, point-of-service, PPO, EPO, Medi-Cal
15 managed care, or other) and by age and gender.

16 (2) (A) By June 1, 2014, or within 60 days after the end of the
17 initial open enrollment period described in subdivision (c) of
18 Section 10965.3, whichever date is later, the department shall
19 report to the fiscal and appropriate policy committees of the
20 Legislature, and post publicly on the department's Internet Web
21 site, the enrollment data submitted by each health insurer pursuant
22 to this subdivision.

23 (B) The requirement for submitting a report to the fiscal and
24 appropriate policy committees of the Legislature under this
25 paragraph is inoperative four years after the date on which the
26 report required under this paragraph is due, pursuant to Section
27 10231.5 of the Government Code.

28 (c) The department shall consult with the Department of
29 Managed Health Care to ensure that the data collected and reported
30 pursuant to this section is comparable and consistent, ~~does not~~
31 ~~duplicate existing reporting requirements,~~ and utilizes existing
32 reporting formats to the extent feasible.

33 (d) For purposes of this section, the following definitions shall
34 apply:

35 (1) "Exchange" means the California Health Benefit Exchange
36 established under Section 100500 of the Government Code.

37 (2) "Grandfathered coverage" means coverage that constitutes
38 a grandfathered health plan under Section 1251 of the federal
39 Patient Protection and Affordable Care Act (Public Law 111-148),
40 as amended by the federal Health Care and Education

1 *Reconciliation Act of 2010 (Public Law 111-152), and any rules,*
2 *regulations, or guidance issued pursuant to that law.*

3 (3) “Nongrandfathered coverage” means coverage that does
4 not constitute grandfathered coverage.

5 SEC. 6. Section 10965.3 of the Insurance Code is amended to
6 read:

7 10965.3. (a) (1) On and after October 1, 2013, a health insurer
8 shall fairly and affirmatively offer, market, and sell all of the
9 insurer’s health benefit plans that are sold in the individual market
10 for policy years on or after January 1, 2014, to all individuals and
11 dependents in each service area in which the insurer provides or
12 arranges for the provision of health care services. A health insurer
13 shall limit enrollment in individual health benefit plans to open
14 enrollment periods, *annual enrollment periods*, and special
15 enrollment periods as provided in subdivisions (c) and (d).

16 (2) A health insurer shall allow the policyholder of an individual
17 health benefit plan to add a dependent to the policyholder’s health
18 benefit plan at the option of the policyholder, consistent with the
19 open enrollment, annual enrollment, and special enrollment period
20 requirements in this section.

21 (b) An individual health benefit plan issued, amended, or
22 renewed on or after January 1, 2014, shall not impose any
23 preexisting condition provision upon any individual.

24 (c) (1) A health insurer shall provide an initial open enrollment
25 period from October 1, 2013, to March 31, 2014, inclusive, and
26 annual enrollment periods for ~~plan~~ *policy years beginning* on or
27 after January 1, 2015, from October 15 to December 7, inclusive,
28 of the preceding calendar year, *subject to paragraph (3)*.

29 (2) Pursuant to Section 147.104(b)(2) of Title 45 of the Code
30 of Federal Regulations, for individuals enrolled in noncalendar-year
31 individual health plan contracts, a ~~plan~~ *health insurer* shall also
32 provide a limited open enrollment period beginning on the date
33 that is 30 calendar days prior to the date the policy year ends in
34 2014.

35 (3) *To the extent permitted by PPACA, the Exchange may, by*
36 *regulation, modify the initial open enrollment period and the*
37 *annual enrollment period for the policy year beginning on January*
38 *1, 2015. A health benefit plan offered in the individual market shall*
39 *comply with those modifications regardless of whether the plan is*
40 *offered inside or outside the Exchange. A regulation adopted*

1 *pursuant to this paragraph shall be considered by the Office of*
2 *Administrative Law to be necessary for the immediate preservation*
3 *of the public peace, health and safety, and general welfare, and*
4 *may be adopted as an emergency regulation in accordance with*
5 *Chapter 3.5 (commencing with Section 11340) of Part 1 of Division*
6 *3 of Title 2 of the Government Code.*

7 (d) (1) Subject to paragraph (2), commencing January 1, 2014,
8 a health insurer shall allow an individual to enroll in or change
9 individual health benefit plans as a result of the following triggering
10 events:

11 (A) He or she or his or her dependent loses minimum essential
12 coverage. For purposes of this paragraph, both of the following
13 definitions shall apply:

14 (i) “Minimum essential coverage” has the same meaning as that
15 term is defined in subsection (f) of Section 5000A of the Internal
16 Revenue Code (26 U.S.C. Sec. 5000A).

17 (ii) “Loss of minimum essential coverage” includes, but is not
18 limited to, loss of that coverage due to the circumstances described
19 in Section 54.9801-6(a)(3)(i) to (iii), inclusive, of Title 26 of the
20 Code of Federal Regulations and the circumstances described in
21 Section 1163 of Title 29 of the United States Code. “Loss of
22 minimum essential coverage” also includes loss of that coverage
23 for a reason that is not due to the fault of the individual.

24 (iii) “Loss of minimum essential coverage” does not include
25 loss of that coverage due to the individual’s failure to pay
26 premiums on a timely basis or situations allowing for a rescission,
27 subject to clause (ii) and Sections 10119.2 and 10384.17.

28 (B) He or she gains a dependent or becomes a dependent.

29 (C) He or she is mandated to be covered as a dependent pursuant
30 to a valid state or federal court order.

31 (D) He or she has been released from incarceration.

32 (E) His or her health coverage issuer substantially violated a
33 material provision of the health coverage contract.

34 (F) He or she gains access to new health benefit plans as a result
35 of a permanent move.

36 (G) He or she was receiving services from a contracting provider
37 under another health benefit plan, as defined in Section 10965 or
38 Section 1399.845 of the Health and Safety Code for one of the
39 conditions described in subdivision (a) of Section 10133.56 and
40 that provider is no longer participating in the health benefit plan.

1 (H) He or she demonstrates to the Exchange, with respect to
2 health benefit plans offered through the Exchange, or to the
3 department, with respect to health benefit plans offered outside
4 the Exchange, that he or she did not enroll in a health benefit plan
5 during the immediately preceding enrollment period available to
6 the individual because he or she was misinformed that he or she
7 was covered under minimum essential coverage.

8 (I) He or she is a member of the reserve forces of the United
9 States military returning from active duty or a member of the
10 California National Guard returning from active duty service under
11 Title 32 of the United States Code.

12 (J) With respect to individual health benefit plans offered
13 through the Exchange, in addition to the triggering events listed
14 in this paragraph, any other events listed in Section 155.420(d) of
15 Title 45 of the Code of Federal Regulations.

16 (2) With respect to individual health benefit plans offered
17 outside the Exchange, an individual shall have 60 days from the
18 date of a triggering event identified in paragraph (1) to apply for
19 coverage from a health care service plan subject to this section.
20 With respect to individual health benefit plans offered through the
21 Exchange, an individual shall have 60 days from the date of a
22 triggering event identified in paragraph (1) to select a plan offered
23 through the Exchange, unless a longer period is provided in Part
24 155 (commencing with Section 155.10) of Subchapter B of Subtitle
25 A of Title 45 of the Code of Federal Regulations.

26 (e) With respect to individual health benefit plans offered
27 through the Exchange, the effective date of coverage required
28 pursuant to this section shall be consistent with the dates specified
29 in Section 155.410 or 155.420 of Title 45 of the Code of Federal
30 Regulations, as applicable. A dependent who is a registered
31 domestic partner pursuant to Section 297 of the Family Code shall
32 have the same effective date of coverage as a spouse.

33 (f) With respect to an individual health benefit plan offered
34 outside the Exchange, the following provisions shall apply:

35 (1) After an individual submits a completed application form
36 for a plan, the insurer shall, within 30 days, notify the individual
37 of the individual's actual premium charges for that plan established
38 in accordance with Section 10965.9. The individual shall have 30
39 days in which to exercise the right to buy coverage at the quoted
40 premium charges.

1 (2) With respect to an individual health benefit plan for which
2 an individual applies during the initial open enrollment period
3 described in subdivision (c), when the policyholder submits a
4 premium payment, based on the quoted premium charges, and that
5 payment is delivered or postmarked, whichever occurs earlier, by
6 December 15, 2013, coverage under the individual health benefit
7 plan shall become effective no later than January 1, 2014. When
8 that payment is delivered or postmarked within the first 15 days
9 of any subsequent month, coverage shall become effective no later
10 than the first day of the following month. When that payment is
11 delivered or postmarked between December 16, 2013, and
12 December 31, 2013, inclusive, or after the 15th day of any
13 subsequent month, coverage shall become effective no later than
14 the first day of the second month following delivery or postmark
15 of the payment.

16 (3) With respect to an individual health benefit plan for which
17 an individual applies during the annual open enrollment period
18 described in subdivision (c), when the individual submits a
19 premium payment, based on the quoted premium charges, and that
20 payment is delivered or postmarked, whichever occurs later, by
21 December 15, coverage shall become effective as of the following
22 January 1. When that payment is delivered or postmarked within
23 the first 15 days of any subsequent month, coverage shall become
24 effective no later than the first day of the following month. When
25 that payment is delivered or postmarked between December 16
26 and December 31, inclusive, or after the 15th day of any subsequent
27 month, coverage shall become effective no later than the first day
28 of the second month following delivery or postmark of the
29 payment.

30 (4) With respect to an individual health benefit plan for which
31 an individual applies during a special enrollment period described
32 in subdivision (d), the following provisions shall apply:

33 (A) When the individual submits a premium payment, based
34 on the quoted premium charges, and that payment is delivered or
35 postmarked, whichever occurs earlier, within the first 15 days of
36 the month, coverage under the plan shall become effective no later
37 than the first day of the following month. When the premium
38 payment is neither delivered nor postmarked until after the 15th
39 day of the month, coverage shall become effective no later than

1 the first day of the second month following delivery or postmark
2 of the payment.

3 (B) Notwithstanding subparagraph (A), in the case of a birth,
4 adoption, or placement for adoption, the coverage shall be effective
5 on the date of birth, adoption, or placement for adoption.

6 (C) Notwithstanding subparagraph (A), in the case of marriage
7 or becoming a registered domestic partner or in the case where a
8 qualified individual loses minimum essential coverage, the
9 coverage effective date shall be the first day of the month following
10 the date the insurer receives the request for special enrollment.

11 (g) (1) A health insurer shall not establish rules for eligibility,
12 including continued eligibility, of any individual to enroll under
13 the terms of an individual health benefit plan based on any of the
14 following factors:

15 (A) Health status.

16 (B) Medical condition, including physical and mental illnesses.

17 (C) Claims experience.

18 (D) Receipt of health care.

19 (E) Medical history.

20 (F) Genetic information.

21 (G) Evidence of insurability, including conditions arising out
22 of acts of domestic violence.

23 (H) Disability.

24 (I) Any other health status-related factor as determined by any
25 federal regulations, rules, or guidance issued pursuant to Section
26 2705 of the federal Public Health Service Act.

27 (2) Notwithstanding subdivision (c) of Section 10291.5, a health
28 insurer shall not require an individual applicant or his or her
29 dependent to fill out a health assessment or medical questionnaire
30 prior to enrollment under an individual health benefit plan. A health
31 insurer shall not acquire or request information that relates to a
32 health status-related factor from the applicant or his or her
33 dependent or any other source prior to enrollment of the individual.

34 (h) (1) A health insurer shall consider as a single risk pool for
35 rating purposes in the individual market the claims experience of
36 all insureds and enrollees in all nongrandfathered individual health
37 benefit plans offered by that insurer in this state, whether offered
38 as health care service plan contracts or individual health insurance
39 policies, including those insureds who enroll in individual coverage
40 through the Exchange and insureds who enroll in individual

1 coverage outside the Exchange. Student health insurance coverage,
2 as such coverage is defined at Section 147.145(a) of Title 45 of
3 the Code of Federal Regulations, shall not be included in a health
4 insurer's single risk pool for individual coverage.

5 (2) Each calendar year, a health insurer shall establish an index
6 rate for the individual market in the state based on the total
7 combined claims costs for providing essential health benefits, as
8 defined pursuant to Section 1302 of PPACA, within the single risk
9 pool required under paragraph (1). The index rate shall be adjusted
10 on a marketwide basis based on the total expected marketwide
11 payments and charges under the risk adjustment and reinsurance
12 programs established for the state pursuant to Sections 1343 and
13 1341 of PPACA. The premium rate for all of the health insurer's
14 health benefit plans in the individual market shall use the applicable
15 index rate, as adjusted for total expected marketwide payments
16 and charges under the risk adjustment and reinsurance programs
17 established for the state pursuant to Sections 1343 and 1341 of
18 PPACA, subject only to the adjustments permitted under paragraph
19 (3).

20 (3) A health insurer may vary premium rates for a particular
21 health benefit plan from its index rate based only on the following
22 actuarially justified plan-specific factors:

23 (A) The actuarial value and cost-sharing design of the health
24 benefit plan.

25 (B) The health benefit plan's provider network, delivery system
26 characteristics, and utilization management practices.

27 (C) The benefits provided under the health benefit plan that are
28 in addition to the essential health benefits, as defined pursuant to
29 Section 1302 of PPACA and Section 10112.27. These additional
30 benefits shall be pooled with similar benefits within the single risk
31 pool required under paragraph (1) and the claims experience from
32 those benefits shall be utilized to determine rate variations for
33 plans that offer those benefits in addition to essential health
34 benefits.

35 (D) With respect to catastrophic plans, as described in subsection
36 (e) of Section 1302 of PPACA, the expected impact of the specific
37 eligibility categories for those plans.

38 (E) Administrative costs, excluding any user fees required by
39 the Exchange.

1 (i) This section shall only apply with respect to individual health
2 benefit plans for policy years on or after January 1, 2014.

3 (j) This section shall not apply to an individual health benefit
4 plan that is a grandfathered health plan.

5 (k) If Section 5000A of the Internal Revenue Code, as added
6 by Section 1501 of PPACA, is repealed or amended to no longer
7 apply to the individual market, as defined in Section 2791 of the
8 federal Public Health Service Act (42 U.S.C. Sec. ~~300gg-4~~;
9 ~~300gg-91~~), subdivisions (a), (b), and (g) shall become inoperative
10 12 months after the date of that repeal or amendment and individual
11 health care benefit plans shall thereafter be subject to Sections
12 10901.2, 10951, and 10953.

13 *SEC. 7. No reimbursement is required by this act pursuant to*
14 *Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*

22 ~~SECTION 1. Section 1341.45 of the Health and Safety Code~~
23 ~~is amended to read:~~

24 ~~1341.45. (a) There is hereby created in the State Treasury the~~
25 ~~Managed Care Administrative Fines and Penalties Fund.~~

26 ~~(b) The fines and administrative penalties collected pursuant to~~
27 ~~this chapter, on and after the operative date of this section, shall~~
28 ~~be deposited into the Managed Care Administrative Fines and~~
29 ~~Penalties Fund.~~

30 ~~(c) (1) The fines and administrative penalties deposited into~~
31 ~~the Managed Care Administrative Fines and Penalties Fund shall~~
32 ~~be transferred by the department, beginning September 1, 2009,~~
33 ~~and annually thereafter, as follows:~~

34 ~~(A) The first one million dollars (\$1,000,000) shall be~~
35 ~~transferred to the Medically Underserved Account for Physicians~~
36 ~~within the Health Professions Education Fund and shall, upon~~
37 ~~appropriation by the Legislature, be used for the purposes of the~~
38 ~~Steven M. Thompson Physician Corps Loan Repayment Program,~~
39 ~~as specified in Article 5 (commencing with Section 128550) of~~
40 ~~Chapter 5 of Part 3 of Division 107 and, notwithstanding Section~~

1 ~~128555, shall not be used to provide funding for the Physician~~
2 ~~Volunteer Program.~~

3 ~~(B) Any amount over the first one million dollars (\$1,000,000),~~
4 ~~including accrued interest, in the fund shall be transferred to the~~
5 ~~Major Risk Medical Insurance Fund created pursuant to Section~~
6 ~~12739 of the Insurance Code and shall, upon appropriation by the~~
7 ~~Legislature, be used for the Major Risk Medical Insurance Program~~
8 ~~for the purposes specified in Section 12739.1 of the Insurance~~
9 ~~Code.~~

10 ~~(C) Transfers under this paragraph shall cease on the date the~~
11 ~~Managed Risk Medical Insurance Program becomes inoperative.~~
12 ~~The Director of Finance shall notify the Joint Legislative Budget~~
13 ~~Committee at the time the program becomes inoperative.~~

14 ~~(2) Commencing on the date transfers under paragraph (1) cease,~~
15 ~~and annually thereafter, the fines and administrative penalties~~
16 ~~deposited into the Managed Care Administrative Fines and~~
17 ~~Penalties Fund shall be transferred by the department to the~~
18 ~~Medically Underserved Account for Physicians within the Health~~
19 ~~Professions Education Fund and shall, upon appropriation by the~~
20 ~~Legislature, be used for the purposes of the Steven M. Thompson~~
21 ~~Physician Corps Loan Repayment Program, as specified in Article~~
22 ~~5 (commencing with Section 128550) of Chapter 5 of Part 3 of~~
23 ~~Division 107 and, notwithstanding Section 128555, shall not be~~
24 ~~used to provide funding for the Physician Volunteer Program.~~

25 ~~(d) Notwithstanding subdivision (b) of Section 1356 and Section~~
26 ~~1356.1, the fines and administrative penalties authorized pursuant~~
27 ~~to this chapter shall not be used to reduce the assessments imposed~~
28 ~~on health care service plans pursuant to Section 1356.~~